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CLIFFORD COOK

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CLIFFORD COOK,

Plaintiff,

v.

CITY AND COUNTY OF SAN FRANCISCO,
ANTONIO FLORES, DON SLOAN,
MARSHA ASHE, and DOES 1-50, inclusive

Defendants.

Case No.: C 07-02569 CRB

**DECLARATION OF JOHN HOUSTON
SCOTT IN OPPOSITION TO
DEFENDANTS' MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Date: February 22, 2008

Time: 10:00a.m.

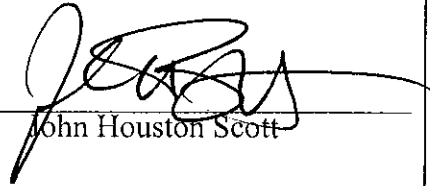
Place: Courtroom 8, 19th Fl.

I, John Houston Scott, declare as follows:

1. I am the attorney for the Plaintiff, Clifford Cook, and I make this Declaration in support of Plaintiff's Opposition to Defendants' Motion for Partial Summary Judgment.

2. Attached hereto is a true and correct copy of excerpts (40:13 - 42:1; 55:5 - 56:5; 56:6 - 12; 56:18; 63:1 - 66:6; 68:4 - 69:13; 69:14 - 20; 74:4 - 24; 99:21 - 104:6; 116:9 - 17; 109:1-110:4; 126:7 - 24; 126:23 - 24; 131:25 - 132:16; 132:17 -133:6; 140:4 - 10; 153:1 - 154:11; 166:9 - 17; 170:22 - 171:8; 171:24 - 172:13; 174:19 - 25; 177 -179; 187:3 - 10; 189:7 - 18) of the deposition transcript of Captain Marsha Ashe taken on January 16, 2008.

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct and that this declaration was executed this 1st day of February, 2008,
3 at San Francisco, California.
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John Houston Scott
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EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

---oOo---

CLIFFORD COOK,

Plaintiff,

vs.

CITY AND COUNTY OF SAN
FRANCISCO, ANTONIO FLORES, DON
SLOAN, MARSHA ASHE, and DOES
1-50, inclusive,

Defendants.

No. C 07-02569 CRB

DEPOSITION OF CAPTAIN MARSHA ASHE

January 16, 2008

REPORTED BY: A. MAGGI SAUNDERS,

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DEPOSITION OF CAPTAIN MARSHA ASHE

1 A. It could be.

2 Q. Okay. And when you say "could be," what
3 do you mean?

4 A. Well, there is a variety of things that
5 could happen that would make it a misdemeanor,
6 depending how they were scratched.

7 There is -- Oftentimes, if there is mutual
8 combat, we try to determine who the primary aggressor
9 is. Many of those decisions are made at the Patrol
10 level.

11 There is a totality of circumstances that
12 are looked at in a Domestic Violence case.

13 Q. Now, you used the term "mutual combat".
14 What does that mean?

15 A. Well, that's -- We've spent a lot of time
16 talking about mutual combat in the Domestic Violence
17 community.

18 There are cases in which both participants
19 are equally engaged in a physical altercation, but we
20 still try to determine a primary aggressor in those
21 situations.

22 Q. When you used the term "primary
23 aggressor," what does that mean?

24 A. The person who is most at fault, or most
25 responsible for starting it.

1 If there was a situation that involved
2 self-defense, for example, that a primary aggressor
3 would be the one who initiated the physical
4 altercation, as opposed to the one who attempted to
5 defend themselves.

6 Q. Okay. Could someone be a primary
7 aggressor based only on words, as opposed to action?
8 In other words, taunting somebody: Can you be a
9 primary aggressor by taunting somebody, or calling
10 somebody names?

11 A. No.

12 Q. Why not?

13 A. Because you didn't physically begin an
14 altercation.

15 Q. Okay. So the primary aggressor would be
16 the first person to take it from being verbal, to
17 become physical.

18 A. Generally.

19 Q. Okay. And could "physical" include, say,
20 throwing something at someone?

21 A. Yes.

22 Q. And I take it, some of the cases that you
23 are involved in, the Domestic Violence incidents that
24 might be characterized as "mutual combat," they start
25 with somebody throwing something at someone?

1 A. They could.

2 Q. Okay. And if -- In mutual combat,
3 situations, how do you try to find out who the primary
4 aggressor is?

5 A. Based on injury and statements and
6 physical evidence.

7 Q. Okay. So, what if someone is the primary
8 aggressor, threw the first punch or the kick or, you
9 know, was the initial aggressor, physical aggressor,
10 but then got injured: What do you do in those cases?

11 MS. BAUMGARTNER: Objection. Incomplete
12 hypothetical; but to the extent you can answer, you can
13 answer.

14 THE WITNESS: Well, I'm not sure I
15 understand your question.

16 MR. SCOTT: Q. Okay. Let's say a woman,
17 you know, kicks her husband, okay, and bites him, okay,
18 kicks and bites him, okay, first. She's the initial
19 aggressor.

20 And then, the husband, during this
21 struggle, hits her back, throws her, and she gets an
22 injury. Is that -- Has the husband committed felony?

23 MS. BAUMGARTNER: Objection. Incomplete
24 hypothetical, and calls for a legal conclusion.

25 MR. SCOTT: Q. No, just under those --

1 infinite number of situations, and we could be here for
2 years discussing all the possible variables, and we --
3 I don't have time for that.

4 Q. I just gave you one simple hypothetical.

5 So, the officers don't have discretion, if
6 a spouse says, "My spouse hit me, and it hurts":

7 That's an automatic felony arrest; is
8 that right?

9 MS. BAUMGARTNER: Objection: Incomplete
10 hypothetical; vague.

11 MR. SCOTT: Q. Is that correct?

12 A. Technically, officers have almost no
13 discretion at the scene of a domestic violence, when
14 there has been injury --

15 Q. Okay.

16 A. -- unless there is compelling evidence to
17 the contrary --

18 Q. Okay.

19 A. -- and it has to be overwhelmingly --

20 Q. Okay. Now, you said "at the scene". What
21 does that mean, "at the scene"?

22 A. Most arrests in domestic violence occur at
23 the time, or very close to the time of the incident.

24 Q. Why is that?

25 A. Because of the mandated arrest policy.

1 Officers are called to the scene of a
2 domestic violence; there is evidence that supports the
3 victim's statement when the arrest is made.

4 That is the majority of cases that we
5 handle.

6 Q. What if a spouse waits a week to complain,
7 is it still mandated?

8 A. It becomes more difficult to have the
9 supporting evidence for the arrest; but the arrest
10 itself is not mandated: You have an opportunity to
11 review a case in a way that is different from being
12 there at the scene.

13 Q. How is it different?

14 A. Well, for one thing, there has been a
15 week's lag time. There is not the ongoing situation.
16 It's calmed down. You may have lost evidence; you may
17 have developed more evidence.

18 There is -- It's a more complex situation.

19 Q. A person could claim an injury that
20 occurred two or three days after the so-called assault,
21 right?

22 A. Absolutely.

23 Q. And a person may have -- things may have
24 happened in a week that would give a person a motive to
25 make a false allegation.

1 Q. How long have you known him?

2 A. I've known Clifford, to nod "hello" to,
3 for five years.

4 Q. And how did you first meet him?

5 A. I first met him the afternoon that he was
6 arrested. I don't remember meeting him before that, or
7 knowing his name, or who he was exactly, prior to this
8 case.

9 Q. And when did you have him arrested?

10 A. I think it was on the 28th, 27th, 28th of
11 July of 2005.

12 Q. Who was the Arresting Officer?

13 A. I suppose, technically, I was.

14 Q. Well, were you the only Arresting Officer?

15 MS. BAUMGARTNER: Objection. Vague.

16 MR. SCOTT: Q. Do you understand the
17 question?

18 A. Not really. I don't know whose name went
19 on the Booking Card as "Arresting Officer".

20 Q. Should it have been your name?

21 A. Not necessarily. There were other
22 officers in the room.

23 Q. Did someone else assist you in making that
24 arrest?

25 A. There were other people in the room, yes.

1 Q. No, I didn't ask who was in the room.

2 I asked, did someone else assist you in
3 making the arrest.

4 MS. BAUMGARTNER: Objection. Vague.

5 THE WITNESS: There wasn't any assistance
6 that was needed.

7 MR. SCOTT: Q. Okay. Was Lieutenant
8 Sloan also an Arresting Officer?

9 MS. BAUMGARTNER: Objection. Vague.

10 THE WITNESS: I don't know who went on the
11 Booking Card as "Arresting Officer".

12 Lieutenant Sloan was in the room.

13 MR. SCOTT: Q. If Lieutenant Sloan's name
14 was on the Booking Card, would that make him an
15 Arresting Officer?

16 A. Well, what makes an Arresting Officer is
17 not necessarily what goes on the Booking Card.

18 An Arresting Officer, in this setting, is
19 not as clear as in a field setting.

20 I informed, as I recall, Inspector Cook
21 that he was under arrest and, in that sense, I suppose
22 that makes me the Arresting Officer.

23 Q. Was Lieutenant Sloan present at the time?

24 A. Yes.

25 Q. Do you know who took my client into

1 custody?

2 MS. BAUMGARTNER: Objection. Vague.

3 MR. SCOTT: Q. Go ahead.

4 A. No, not in the sense of --

5 You know, again, an Arresting Officer
6 takes somebody into custody, and I suppose that that
7 would be me, in the sense that I did tell Inspector
8 Cook he was under arrest.

9 Q. Okay. This afternoon in July, when you
10 told him he was under arrest, this would be July 2005,
11 or. . .

12 A. 2005.

13 Q. 2005.

14 Had you had any contact with Mr. Cook
15 prior to that time?

16 A. No.

17 Q. Did -- Had you ever seen him prior to that
18 time?

19 A. Yes.

20 Q. And where had you seen him?

21 A. He worked in the Robbery Detail, which is
22 Room 400. I worked in Room 400. We would nod to each
23 other in the hallway.

24 Q. Did you know him by reputation prior to
25 July 2005?

A. No. Well, I take that back:

I knew -- I never put a face with the name, but I did hear Clifford Cook talked about in the Robbery Detail with affection. So, I knew that he was well-liked. That was the reputation that I had about him.

Q. Can you give me an example of things that you heard said that led you to believe he was "well-liked"?

A. I don't remember anything specifically.

Q. So, based on what you had heard from other officers, he had a good reputation?

A. He was well-liked.

Q. Okay. Did you -- But, by reputation, had you heard anything negative about him?

A. No.

Q. Did you know anything about his work history?

A. No.

Q. Did you have access to his personnel file?

A. No.

Q. Why not?

A. We don't have access to personnel files. There has to be a reason to access a personnel file. I certainly never had one.

1 Q. Okay.

2 A. -- if it related to domestic violence,
3 yes, that would have been relevant.

4 Q. Okay. And did you attempt to determine,
5 as part of your investigation before you arrested him,
6 whether he had a history of domestic violence?

7 A. Yes.

8 Q. And what did you find out?

9 A. There were four prior allegations in
10 outside jurisdictions, three or four. The number, I
11 don't recall specifically.

12 Q. And was that something you had specific
13 information about?

14 A. That was information provided by the
15 victim and corroborated by calls for police services in
16 other jurisdictions.

17 Q. Okay. And what did you get to corroborate
18 the allegations?

19 A. There were CAD, or whatever the -- there
20 were histories that documented those calls for
21 services.

22 Q. Okay. And you said three or four?

23 A. Three or four.

24 Q. And what do you know about those three or
25 four?

1 A. Just that there were three or four
2 allegations: One of which involved an incident of
3 drinking; one of following, or -- up in Napa.

4 You know, the particulars, if I knew, I
5 have certainly forgotten.

6 Q. Did any of them involve violence or
7 injuries?

8 A. I don't believe there were any allegations
9 of injury.

10 Q. Oh. So, there was a history of some, I
11 guess, reports to police, but no prior history of
12 injuries or violence, correct?

13 A. As I recall.

14 Q. All right. And the victim, what was her
15 name?

16 A. Lisa.

17 Q. And when did you first meet her?

18 A. I never met her.

19 Q. Did you ever talk to her?

20 A. No.

21 Q. And the information you had about her
22 allegations, from whom did you obtain that information?

23 A. We got that information from Lieutenant
24 Sloan.

25 Q. And when did you get --

1 Q. When did you see a picture of her?

2 A. When I reviewed the file; I think that was
3 in August.

4 Q. Okay. When did you first discover that
5 she was Caucasian?

6 A. I don't remember. It didn't -- It didn't
7 matter. Probably in reviewing the pictures or -- it --
8 My sense -- Well, that's not correct.

9 My sense was that she was Caucasian,
10 because of talking about bruising.

11 Q. Okay. So --

12 A. And that was early on; and pictures that
13 she had taken, or had had taken of bruises.

14 Q. And those were part of the file before the
15 arrest?

16 A. I don't know where those were before the
17 arrest. I reviewed the file in August, and saw those
18 pictures.

19 Q. Did you see the pictures before you made
20 the arrest?

21 A. No.

22 Q. Were you aware of alleged bruises before
23 you made the arrest?

24 A. Yes.

25 Q. And who told you about the bruises?

1 know -- I don't believe that's the phrase she used, so
2 I believe that's a vague question.

3 MR. SCOTT: Can you read back about two
4 questions and answers ago? Was there an answer where
5 the witness used the term "decline to prosecute".

6 (The record was read by
7 the Reporter as requested.)

8 MS. BAUMGARTNER: I apologize. I did not
9 hear the word "decline".

10 MR. SCOTT: Fair enough. It happens to me
11 all the time.

12 Q. When you used the term, "decline to
13 prosecute," what did you mean by that?

14 A. I meant the same thing I meant with
15 "discharging a case". The standard for an arrest is
16 different, and certainly much lower, than the standard
17 of proof in a criminal court case.

18 And it's the District Attorney's Office,
19 after the arrest is made, who has the responsibility
20 to review cases for the likelihood of a conviction.

21 Q. Are you aware of any cases where a
22 District Attorney reviewed a case before an arrest was
23 made?

24 A. In an arrest warrant case, that obviously
25 happens. That information is presented to the District

1 Attorney.

2 We oftentimes review cases with the
3 District Attorney before an arrest is made, for a
4 variety of reasons: Not for approval, but just to
5 see what additional charges may exist; what we may be
6 missing; and if we have an opportunity prior to an
7 arrest for investigative steps, we bring the District
8 Attorney in, as a matter of course, on many, many
9 cases.

10 Q. So it's not unusual to have the District
11 Attorney's Office review a Domestic Violence case
12 before an arrest is made.

13 A. Actually, it is unusual.

14 Q. Okay.

15 A. It's not unusual to discuss a case with
16 the District Attorney before the arrest, but most of
17 our cases come to us already with an arrest made.

18 Q. Okay. But in the cases where an arrest
19 hasn't been made, is it unusual to discuss the case
20 with the District Attorney before an arrest is made?

21 A. No.

22 Q. All right.

23 A. Once the case is being investigated.

24 Q. And would it be unusual to arrest someone
25 after the District Attorney has told you that she is

1 not going to prosecute the case?

2 A. It would be unusual, yes.

3 Q. How many times has that occurred since
4 you've been assigned to the Domestic Violence Unit?

5 A. I have never been told by a District
6 Attorney that they weren't going to prosecute a case
7 prior to an arrest.

8 Q. Okay. You mean, directly.

9 A. Or indirectly.

10 Q. Oh. And if you were aware of that, would
11 you make an arrest?

12 A. Possibly --

13 MS. BAUMGARTNER: Objection. Calls for
14 speculation.

15 MR. SCOTT: Q. Go ahead.

16 A. Possibly.

17 Q. Why?

18 A. The District Attorney doesn't approve our
19 arrests. The level of --

20 The requirement to make an arrest is
21 very different from the requirements necessary to
22 proceed with a criminal case.

23 And based on the totality of circumstances
24 in a case, it would be unusual, and it would -- it
25 would absolutely be unusual.

1 I would want to know what the District
2 Attorney's concerns were, and if we could address
3 those prior to making an arrest.

4 Q. But would it be a futile gesture, if the
5 DA had told you she wasn't going to prosecute, and then
6 you went and arrested anyway?

7 MS. BAUMGARTNER: Objection. Calls for
8 speculation. Incomplete hypothetical.

9 MR. SCOTT: Q. Go ahead.

10 A. No, I don't think it would be a futile
11 gesture to make the arrest. We have a legal
12 responsibility to arrest on Probable Cause.

13 Q. Even -- But you've never done it, as far
14 as you know.

15 A. Arrested on Probable --

16 MS. BAUMGARTNER: Objection. Vague.

17 MR. SCOTT: Q. Arrest someone, after the
18 DA told you she wasn't going to prosecute.

19 A. I've never been told by the District
20 Attorney that they were not going to prosecute a case,
21 and then made an arrest on it; but I've never had a
22 discussion personally with the District Attorney about
23 an arrest prior to making an arrest.

24 Q. Okay. Have you ever been informed through
25 your staff that the District Attorney was not going to

1 prosecute, and then approved an arrest?

2 A. No, I have not.

3 Q. Why not?

4 MS. BAUMGARTNER: Objection. [Inaudible]

5 MR. SCOTT: Let me ask it another way.

6 Q. Is that because the facts were never
7 egregious enough?

8 MS. BAUMGARTNER: I think this lacks
9 foundation. Objection: Lacks foundation.

10 MR. SCOTT: Q. Fair enough. Go ahead.

11 A. I don't understand your question.

12 Q. Well, you have testified that you have
13 never had someone arrested, after you learned that the
14 District Attorney did not want to prosecute the case,
15 correct?

16 A. That is correct.

17 Q. And my question is, although you can
18 hypothetically conceive of a situation where you might
19 do that, correct?

20 A. Yes.

21 Q. Okay.

22 So my question is, you have never come
23 across the situation that you thought was so
24 egregious, where you felt compelled to arrest, after
25 you learned the District Attorney was not going to

1 prosecute.

2 MS. BAUMGARTNER: Objection. Lacks
3 foundation.

4 THE WITNESS: No, I've never been told
5 that a District Attorney would not prosecute a case
6 prior to making an arrest.

7 MR. SCOTT: Q. Okay. So, is it your
8 testimony that every case that your unit has submitted
9 to the District Attorney's Office has resulted in the
10 decision to prosecute?

11 MS. BAUMGARTNER: Objection. Vague, and
12 lacks foundation.

13 MR. SCOTT: Q. Go ahead.

14 A. No. Most cases we present to the District
15 Attorney are not prosecuted.

16 Q. All right. When you say "most," what
17 percent?

18 A. I have the numbers we track; that's one of
19 the things we track.

20 I would say at least 50 percent of cases
21 we present are not prosecuted.

22 Q. And are these monthly reports?

23 A. Yes.

24 Q. And what are these reports called?

25 A. Statistics.

1 Q. Okay. And as a supervisor, do you on
2 occasion rely on these Chronologicals?

3 A. I do a -- I'm not sure what you mean by
4 "rely on".

5 Q. Any decisions you make as a supervisor, do
6 you rely on these?

7 A. I, as a matter of course, review cases
8 after they are closed.

9 The Lieutenant reviews active and ongoing
10 cases. I look at them for the quality of
11 investigation, to get a sense of the type of
12 investigations the officers are doing.

13 Generally, in a case like Inspector
14 Cook's, I don't know when this Chronological record was
15 started.

16 When, you know, the Inspectors keep
17 notes and record notes; and then, when they go to
18 transcribe it onto a written document, I'm not sure
19 when this was -- I know that the notes started on the
20 26th, but I don't know when Inspector Flores started
21 keeping this record.

22 I reviewed this particular record, I
23 believe, in August.

24 Q. Okay. But you don't know if --

25 A. So, I didn't base decisions for Inspector

1 Cook's arrest on this document.

2 Q. But you don't know if it existed then or
3 not at the time of his arrest?

4 A. I -- I don't -- I never asked about this.

5 Q. Okay.

6 A. I don't know if it did or didn't.

7 Q. Now, before you talked about high-profile
8 cases, and you talked about the Fire Chief. Was
9 Mr. Cook's case considered a high-profile case?

10 A. Yes.

11 Q. Why?

12 A. Because of the allegation of Domestic --
13 any -- Well, the allegation of any crime against a
14 Police Officer rises to a higher level of
15 investigation.

16 A Domestic Violence allegation against a
17 Police Officer triggers all sorts of things
18 Departmentally for that officer, whether or not the
19 allegations are true.

20 There has been a great deal of public
21 focus on officer-involved domestic violence cases
22 nationally and locally.

23 A Police Officer, unlike a truck driver,
24 can lose his or her job based on a Domestic Violence
25 allegation. So, there is a lot more personal and

DEPOSITION OF CAPTAIN MARSHA ASHE

1 MS. BAUMGARTNER: Wait. I'm going to
2 object.

3 THE WITNESS: Okay.

4 MS. BAUMGARTNER: Inspector Cook is in the
5 room. I am presuming that he's waiving any rights to
6 confidentiality in his Peace Officer personnel record,
7 with respect to private Administrative matters?

8 MR. SCOTT: I don't know. Can we talk
9 about it?

10 MR. COOK: Yes.

11 MR. SCOTT: Okay, we'll take a break.
12 Let's take a short break. I'll talk to my client about
13 it.

14 (Brief recess taken.)

15 MR. SCOTT: Okay, back on the record.

16 Q. Let me reask the question:

17 As far as prior Administrative matters are
18 concerned, was any prior discipline brought to your
19 attention?

20 MS. BAUMGARTNER: Objection. Vague.

21 THE WITNESS: I don't remember a specific
22 discipline discussed. I remember allegations of
23 misconduct --

24 MR. SCOTT: Q. Okay.

25 A. -- against the Inspector involving --

1 A. Because that's something worth knowing.

2 Q. Why?

3 A. Because I would want to ask her, "Why:
4 What problems do you see with this case? And what, if
5 any of those concerns, can we address before we make
6 the arrest?"

7 Q. Okay. And if you had been told on the
8 morning of July 27th, 2005, that the District
9 Attorney's Office was not going to prosecute, would you
10 have gone ahead with the arrest anyway in the
11 afternoon?

12 MS. BAUMGARTNER: Objection. Incomplete
13 hypothetical. Calls for speculation.

14 MR. SCOTT: Q. Go ahead.

15 A. Yes, I would have.

16 Q. Why?

17 A. Because this case was predicated on
18 physical evidence, escalating violence, as reported by
19 the victim, and lethality factors, that suggested this
20 could easily be a domestic violence homicide.

21 And I felt that we had a legal and ethical
22 responsibility to make an arrest in this case.

23 Q. And is that why you wanted enhanced bail?

24 A. Yes.

25 Q. Did you think enhancing the bail from

1 Flores?

2 MS. BAUMGARTNER: Objection. It's been
3 asked and answered.

4 THE WITNESS: I don't have any
5 recollection of who I discussed it with, or when.

6 MR. SCOTT: Q. Okay. I thought you
7 testified a little while ago you discussed it with
8 Inspector Flores and Lieutenant Sloan?

9 A. Well, it was discussed with them. I don't
10 have specific recollection of discussing that with
11 them.

12 Q. Okay. You believe it was discussed with
13 them, but you do not recall those discussions?

14 A. It had to have been discussed with
15 Inspector Flores, as he was attempting to get the
16 enhancement. I don't recall discussing that with him.

17 Q. All right. So, if I understand your
18 testimony, you believe you must have discussed it with
19 him, you just do not have a recollection of the
20 discussion.

21 A. That's correct.

22 Q. And you don't recall if that discussion
23 took place before or after the arrest.

24 A. No, I don't.

25 Q. Okay. Do you recall having any

1 conversations with Inspector Flores after the
2 9:30 meeting and before the arrest?

3 A. No.

4 Q. Is it your testimony that you did not?

5 A. I don't remember if I did or I didn't.

6 Q. Did you have any conversations regarding
7 this case with Lieutenant Sloan after the 9:30 meeting
8 and before the arrest?

9 A. Yes.

10 Q. Okay. And how many?

11 A. I don't remember. We spoke on the phone,
12 I think, several times.

13 Q. Did he tell you he had talked to Miss
14 Aguilar-Tarchi?

15 A. I don't remember a discussion with him
16 about that.

17 Q. If he had talked to her, is that something
18 that he should have reported to you in the normal
19 course of business?

20 MS. BAUMGARTNER: Objection. Calls for
21 speculation. I think it's been asked and answered.

22 MR. SCOTT: Q. Go ahead.

23 A. That he talks to her would not be
24 something he would have told me; nor would I have
25 expected him to tell me, in the normal course of

1 events.

2 Q. Okay. And if Miss Aguilar-Tarchi told him
3 she was not going to go for a warrant or prosecute the
4 case, is that something you would expect him to tell
5 you?

6 A. Yes.

7 MS. BAUMGARTNER: Objection.

8 MR. SCOTT: Q. Thank you.

9 MS. BAUMGARTNER: Asked and answered.

10 And if I could finish my objection,
11 please: It's been asked and answered, and calls for
12 speculation.

13 MR. SCOTT: Q. Is it your testimony that
14 Lieutenant Sloan did not tell you that he was informed
15 of that Ms. Aguilar-Tarchi was not going to seek a
16 warrant or prosecute the case before my client was
17 arrested?

18 MS. BAUMGARTNER: Objection. Compound.

19 MR. SCOTT: Q. I'll break it up.

20 Is it your testimony that Lieutenant Sloan
21 did not tell you that he learned that Miss
22 Aguilar-Tarchi was not going to prosecute this case
23 before you arrested my client?

24 A. I'm still confused about exactly what you
25 are asking.

1 did the issue come up of whether Officer Cook would be
2 interviewed?

3 A. No.

4 Q. Would it -- If -- Did it matter to you
5 whether he was interviewed before he was arrested?

6 A. No. Not at that time.

7 Q. Oh. And were you -- Did you intend to
8 have him arrested, regardless of what he would have
9 said at an interview?

10 A. Yes.

11 Q. All right. And if he could have proven to
12 you that at the time of the alleged assault he wasn't
13 even in the state, you would have arrested him anyway.

14 MS. BAUMGARTNER: Objection. Calls for
15 speculation and lacks foundation.

16 MR. SCOTT: Q. Go ahead.

17 A. Based on the victim's statements and the
18 physical evidence we had, the merits of this case, he
19 would have been arrested, regardless of the statement
20 he made.

21 Q. Okay. And was that the protocol that this
22 office followed in July of 2005?

23 MS. BAUMGARTNER: Objection. Vague.

24 THE WITNESS: Which protocol?

25 MR. SCOTT: Q. That you would arrest

1 or en route?

2 A. If he wasn't there for the actual arrest,
3 I remember him getting there pretty quickly.

4 Q. And after you told Mr. Cook he was under
5 arrest, was he escorted to jail?

6 A. At some point afterwards he was booked.
7 I don't know if he was physically taken,
8 or if they did an in-absentia booking.

9 Generally, what happens, when we have a
10 police officer arrested, the POA, as I understand it,
11 will make bail arrangements prior. So, it's done in
12 a way that's different.

13 In a normal arrest, very shortly
14 thereafter they would be taken up and booked into
15 jail.

16 The time line for Inspector Cook was
17 more prolonged than that.

18 Q. Do you know when it was?

19 A. No.

20 Q. Was Lieutenant Sloan present when you told
21 Mr. Cook he was under arrest?

22 A. Yes.

23 Q. Approximately how long were you and
24 Lieutenant Sloan at Room 400 that afternoon when
25 Mr. Cook was present?

1 MS. BAUMGARTNER: Objection. Vague.

2 THE WITNESS: In Room 400, I think we were
3 there for an hour, an hour and a half.

4 MR. SCOTT: Q. And during that hour, to
5 hour and a half, was Mr. Cook present most of that
6 time?

7 MS. BAUMGARTNER: Objection. Vague.

8 THE WITNESS: After the arrest, he was
9 present for the entire time in another room.

10 MR. SCOTT: Q. About how long had he been
11 there at Room 400 before you told him he was under
12 arrest?

13 A. I think, a few minutes. He wasn't there
14 very long.

15 Q. And during those few minutes, did the
16 issue come up of interviewing Mr. Cook?

17 A. I wasn't with him. I don't know what came
18 up during those few minutes before I came.

19 Q. Did anyone on behalf of Mr. Cook tell you
20 that he was -- wanted to be interviewed?

21 MS. BAUMGARTNER: Objection. Vague.

22 THE WITNESS: I don't remember any
23 specific discussions prior to telling Inspector Cook
24 that he was under arrest about that. There were some
25 very shortly thereafter.

1 MR. SCOTT: Q. So you don't remember?

2 A. If it wasn't before, it was very shortly
3 after, that Inspector Cook requested to make the
4 statement.

5 Q. And did Lieutenant Sloan respond to that
6 request?

7 A. I don't remember if Lieutenant Sloan did
8 or I did. But one of us advised Inspector Cook to --
9 that he may need to speak with an attorney, or that
10 there would be an opportunity later; I don't remember
11 the exact language.

12 Q. Did you hear Lieutenant Sloan say to
13 Mr. Cook, [quote], "No matter what you say, it won't
14 change anything"?

15 A. I don't remember that specific language.
16 That easily could have been said.

17 Q. Okay. And if I understand you correctly,
18 if it didn't matter what Mr. Cook said during the
19 interview, he was going to be arrested regardless.

20 A. Yes, he was already under arrest at that
21 time.

22 Q. All right. And if he had been interviewed
23 before the arrest, it wouldn't have made any
24 difference, it wouldn't have mattered what he said,
25 correct?

1 MS. BAUMGARTNER: Objection. It's been
2 asked and answered, and calls for speculation.

3 MR. SCOTT: Q. Go ahead.

4 A. It would not have mattered.

5 Q. Okay.

6 Did you think it was important to get a
7 statement from Mr. Cook?

8 MS. BAUMGARTNER: Objection. Vague.

9 THE WITNESS: It is the best investigative
10 practice very shortly after an arrest to attempt to get
11 a statement.

12 MR. SCOTT: Q. And isn't it even a better
13 idea to get the statement before the arrest?

14 A. Not necessarily.

15 Q. Oh, there might be exceptions; but, in
16 general, isn't it better to get a statement as soon as
17 possible?

18 A. In a domestic violence case that's based
19 on physical evidence, whether or not you get a
20 statement beforehand doesn't affect the outcome of the
21 arrest. The arrest is still made.

22 Statements are used for a variety of
23 reasons, including locking people into stories that can
24 later be refuted.

25 There is a variety of reasons to get the

1 in Inspector Flores' chronological report.

2 Q. What about Lieutenant Sloan, should he
3 have had a chronological report?

4 A. No.

5 Q. Why not?

6 A. His -- He was not the investigator on this
7 case. He was -- His information appears to have been
8 included in the chron.

9 Q. Since you've been in the DV Unit, how many
10 people have you arrested for domestic violence?

11 A. Well, there have been, I want to say --
12 You are talking Police Officers.

13 Q. No. Anybody, where you are the arresting
14 officer.

15 A. Only one.

16 Q. Mr. Cook.

17 A. Yes.

18 Q. So, in 400 arrests a month, since 2000,
19 what?

20 A. '4.

21 Q. You've been there since 2004.

22 A. Mm-hmm.

23 Q. So, thousands of arrests, and the only one
24 you made was Mr. Cook.

25 A. Yes.

1 that one reason that you arrested him had to do with an
2 issue of disarming him.

3 A. No.

4 Q. Okay, then, I misunderstood you.

5 MS. BAUMGARTNER: Do you have much longer
6 to go?

7 MR. SCOTT: Maybe a half-hour.

8 MS. BAUMGARTNER: Okay, then, can we take
9 a break?

10 MR. SCOTT: Sure.

11 (Brief recess taken.)

12 MR. SCOTT: Without objection, back on the
13 record.

14 Q. Captain Ashe, does a suspect have a right
15 to provide police investigators with exculpatory
16 information?

17 MS. BAUMGARTNER: Objection. Vague.

18 THE WITNESS: We have an obligation to
19 disclose exculpatory information.

20 I don't know what a suspect's rights
21 are, in terms of disclosing that. I mean, that there
22 is -- that's a legal question, I can't answer.

23 MR. SCOTT: Q. Okay. So, for example, if
24 Mr. Cook had exculpatory information to provide you,
25 you don't know if he had a right to give it to you.

1 A. Again, that's a legal question that I
2 can't answer.

3 Q. Okay.

4 A. I -- There was --

5 In this case, where the decision to make
6 an arrest was based on victim statements and injury,
7 there is nothing, given the totality of circumstances
8 at that point, that would have convinced us
9 otherwise.

10 Q. And what if he had --

11 A. The right to, I don't know.

12 Q. And what if he could provide you with
13 information that, not only was she the aggressor on the
14 occasion-in-question, but on previous occasions, she
15 had been an aggressor: Would that be exculpatory
16 information?

17 MS. BAUMGARTNER: Objection. Compound.
18 Vague. Calls for a legal conclusion, and calls for
19 speculation.

20 MR. SCOTT: Q. Go ahead.

21 A. Yes, that could be considered exculpatory
22 information.

23 Q. And if he had provided you with
24 information that -- to indicate that any injury she
25 had, if she received at another place at another time,

1 not during the incident-in-question, would that have
2 been exculpatory information?

3 MS. BAUMGARTNER: Same objections.

4 THE WITNESS: Yes, that could have been
5 exculpatory information.

6 MR. SCOTT: Q. And do you believe that he
7 had a right to provide you with that information before
8 he was arrested?

9 MS. BAUMGARTNER: Objection. It's been
10 asked and answered. Calls for a legal conclusion.

11 THE WITNESS: No, I don't believe he had a
12 right to provide that before he was arrested.

13 MR. SCOTT: Q. Okay. And if he had
14 provided you with such information before his arrest,
15 you would have made the arrest anyway, correct?

16 MS. BAUMGARTNER: Objection. Calls for
17 speculation.

18 THE WITNESS: We look at information
19 provided by the named suspect with suspicion, and use
20 it more often than not to lock them into a story that
21 can be disproved.

22 MR. SCOTT: Q. Oh. And do you ever view
23 victim statements with suspicion?

24 A. Yes.

25 Q. Why?

1 A. Because, victims in a variety of crimes,
2 can inflate detail; can, you know, out-and-out lie, in
3 cases that you had mentioned earlier, but certainly
4 inflate a story, or exaggerate --

5 Q. Exaggerate?

6 A. Yes.

7 Q. Embellish?

8 A. Yes.

9 Q. And what about when victims are drunk at
10 the time of the alleged assault, is that considered a
11 factor in evaluating the allegations?

12 MS. BAUMGARTNER: Objection. Vague.
13 Lacks foundation. Calls for speculation.

14 THE WITNESS: Substance abuse in domestic
15 violences are recognized as one of the factors to be
16 considered in lethality cases; and when there is
17 substance involved, as was alleged in this
18 relationship --

19 MR. SCOTT: Q. Alcohol, wasn't it?

20 A. I believe just alcohol. I'm not sure --
21 I mean, we almost anticipate there to be
22 alcohol involved in many domestic violence cases, on
23 both sides.

24 Q. All right. And has it been your
25 experience that, on occasion, victims who are

1 intoxicated or drunk at the time of an incident are not
2 always reliable historians?

3 A. Yes.

4 Q. And do you know if the victim in this
5 case, Lisa Cook, was intoxicated at the time of the
6 alleged assault?

7 MS. BAUMGARTNER: Objection. Lacks
8 foundation. She wasn't there.

9 MR. SCOTT: Q. I asked her, do you have
10 any information?

11 A. I believe she said she had been out, and
12 had some drinks, but I don't know how close that was to
13 this event, or of that evening.

14 Q. Now, the conversation that you had with
15 Liz Aguilar-Tarchi, you said it was either the
16 afternoon of the 27th, or the morning of the 28th,
17 correct?

18 A. Yes.

19 Q. And should there be a record somewhere of
20 when that phone conversation occurred?

21 A. I didn't keep a record. I don't keep
22 those record -- those types of records.

23 Q. Would there be phone records?

24 A. Would there be?

25 Q. Yes.

1 best recollection, within the morning of the 29th.

2 Q. When you talked to Miss Tarchi?

3 A. Yeah, I remember it more of a morning
4 conversation, but that is strictly from recollection.

5 Q. And it would have been the morning after
6 the arrest.

7 A. Yes.

8 Q. So you believe it was the morning of the
9 28th.

10 A. It was late the afternoon or the morning
11 of the 29th. The arrest was, I believe, on the 28th,
12 or was it --

13 Q. The 27th.

14 A. The 27th.

15 Q. According to Exhibit 1, it was the 27th.

16 A. (Looking at the documents)

17 So, then, I'm sorry, 28th, then, the
18 morning of the 28th.

19 Q. And I think you said you were surprised to
20 learn that she thought the case was weak?

21 A. No, I wasn't surprised to learn that she
22 thought the case was weak.

23 The case, if we had to proceed strictly on
24 the physical evidence, was weak. I -- We all -- I
25 certainly recognized that.

1 Q. Did Captain Cashman tell you he did not
2 want to make the arrest?

3 A. No.

4 Q. Was that an option?

5 MS. BAUMGARTNER: Objection. Calls for
6 speculation.

7 MR. SCOTT: Q. Go ahead.

8 A. He -- You know, working with Captain
9 Cashman could be quite vocal about certain things.
10 His role in this was administrative, and
11 if he had any opinion as to the arrest, I had never
12 heard it; he never voiced it.

13 Q. Okay.

14 A. And no one -- You know, to clarify
15 something: Nobody wanted to make this arrest. This is
16 never -- This is never a good thing.

17 Q. Why was -- To your knowledge, who made the
18 decision to arrest before a warrant was obtained?

19 A. I ultimately made that decision, in
20 discussion with Deputy Chief Tabak and Captain Keohane.

21 Q. Well, was it their decision or your
22 decision?

23 A. It was my decision, supported by them.

24 Q. What does that mean, "supported by them"?

25 A. Well, I certainly am not going to make an

1 arrest of a police officer, if my Deputy Chief has
2 significant issues with it. I think that that -- I
3 mean, I . . .

4 Q. Well, were you asking them for permission
5 to make the arrest without a warrant?

6 A. We -- "Permission" is the wrong word.

7 I wanted independent people to look at a
8 review of the factors that contributed to making this
9 arrest outside of a warrant.

10 Q. So you wanted them to essentially bless
11 this decision before you --

12 A. I wanted them to understand it, and to
13 agree with it, and just fresh eyes on it.

14 Q. And did you understand that they were
15 acting on behalf of the Chief?

16 A. Yes.

17 Q. And did you understand that, ultimately,
18 you were the final decision-maker on this?

19 A. I don't believe I was the final
20 decision-maker on it. I think I had a very strong
21 voice with it, but . . .

22 Q. Who was the final decision-maker?

23 A. I suppose, ultimately -- Oh, man. . .

24 In the sense that they were acting on
25 behalf of the Chief, the Chief would have been,

1 although. . .

2 Q. So, between --

3 A. -- separating out the administrative
4 issues, versus the criminal issues, the highest-ranking
5 person there of an investigative nature was Deputy
6 Chief Tabak.

7 Q. So he was the final decision-maker.

8 A. In the investigative sense, yes, but he
9 wasn't -- I didn't go to him and ask permission.

10 I went to him to discuss the factors of
11 this case, to see if there were concerns that we
12 hadn't addressed and, in a sense, to involve him in
13 the decision to make the arrest.

14 Q. So, you essentially told him you planned
15 on making the arrest without a warrant --

16 A. I supported the arrest, yes.

17 Q. Well, did you tell him you were going to
18 make an arrest without a warrant, and just as a
19 courtesy, told him, or were you asking for his
20 permission?

21 A. I was asking for his advice.

22 Q. And what was his advice?

23 A. He reviewed the lethality factors, and he
24 supported the idea of making the arrest outside of a
25 warrant.

1 A. It says that it was, if I'm reading this
2 correctly.

3 Q. And did you anticipate that he would be
4 suspended for some period as a result of the arrest?

5 MS. BAUMGARTNER: Objection. Vague and
6 lacks foundation.

7 MR. SCOTT: Q. Go ahead.

8 A. I knew that he would be suspended for some
9 amount of time, based on -- based, in part, on this
10 arrest.

11 Q. And did you understand that one of the
12 Deputy Chiefs at that meeting on the morning of the
13 27th would be involved in the disciplinary process
14 following the arrest, if one was made?

15 MS. BAUMGARTNER: Objection. Vague.
16 Calls for speculation.

17 MR. SCOTT: Q. Go ahead.

18 A. Did I understand that one of the --

19 Q. Deputy Chiefs, either Tabak or Keohane,
20 would be involved in the disciplinary process, if an
21 arrest was made?

22 A. I knew that Captain -- then Captain
23 Keohane would be involved in the disciplinary process;
24 that's why he was there.

25 Q. All right. And whose idea -- Who -- Who

1 (Interoffice Memorandum, to Inspector
2 Tony Flores, from Assistant District
3 Attorney Aguilar Tarchi, RE: Discharge
4 27 - Further Investigation Necessary,
5 7/28/05 marked Plaintiff's Exhibit 6 for
6 identification.)

7 MR. SCOTT: Q. Now, this document we've
8 marked as Exhibit No. 6, is this the document we
9 referred to earlier, that you understood was being
10 provided to Inspector Flores by Ms. Aguilar-Tarchi?

11 A. Yes.

12 Q. Okay. And are these some of the things
13 that she discussed with you when you spoke to her on or
14 about the morning of July 28th?

15 A. We didn't talk about many specifics, other
16 than she felt, you know, again, that she wanted more
17 documentation of prior events, medical records, witness
18 statements . . .

19 Q. So, at some point were you aware that she
20 had a list of 11 things that she wanted?

21 A. No, I didn't know the number.

22 Q. All right. And it says, at the top of the
23 page, it refers to "Discharge 27"; do you see that?

24 A. Yes.

25 Q. What does that mean to you?

STATE OF CALIFORNIA) ss.
)

CERTIFICATE OF REPORTER

I, A. MAGGI SAUNDERS, a Certified Shorthand Reporter in and for the State of California, duly appointed and licensed to administer oaths and so forth, do hereby certify:

That the witness named in the foregoing deposition was by me duly sworn to tell the truth, the whole truth and nothing but the truth;

That the deposition was reported by me, a Certified Shorthand Reporter and disinterested person, and thereafter transcribed into typewriting under my direction;

That if the deposition has not been signed by the time of trial, a reasonable opportunity having been given the witness to do so, signature has been waived in accordance with stipulation between counsel.

IN WITNESS WHEREOF, I have hereunto set my hand and subscribed my signature this 21st day of January, 2008.

A. Maggi Saunders CSR

A. MAGGI SAUNDERS, C.S.R. No. 2755,
Certified Shorthand Reporter,
In and For the State of California

